IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 397 of 2006

LRS.OF MOOL CHAND
V/S
BHERU & ANR.

Mr. DS RATHORE, for the appellant / petitioner

Mr. BR MEHTA, for the respondent

Date of Order : 18.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the impugned judgments.

The plaintiff filed a suit for cancellation of the document on the ground that he mortgaged the property and fraudulently the defendant got executed the registered sale deed, and it was only when the plaintiff went to him in June, 1996 and offered to redeem, the defendant declined thereupon he made enquiries, and learnt that the sale deed had been got executed which is void. Various other grounds have also been taken to assail the sale deed like it being in violation of certain provisions of Colonisation Act etc. The defendant contested the suit interalia on the ground that there was no fraud, and the plaintiff has actually sold the land, and the suit was claimed to be barred by

time also. Issue no. 6 was framed on the question of limitation, and it has been found by the learned trial court that from the evidence of the plaintiff it cannot be accepted that he came to know of the fraud for the first time on 11.6.96 rather after mortgaging the land, even according to him he went to the defendant in 1992-93, and at that time itself he must have come to know, and thus the suit has been held to be barred by time. In appeal also, the learned lower Appellate Court has found that the limitation under Article 59 is three years. The case of the defendant is that the property was mortgaged for five years, and after expiry of the period, he could not manage the funds, the term of mortgage was orally extended but as P.W.1 the plaintiff himself has deposed that on completion of five years when he went to the defendant with money, the defendant told that he has purchased the property. It has been found that for the document dated 7.10.1987 the period of five years expired on 7.10.1992, and the suit could be filed within three years therefrom, while it has been filed on 18.3.1997 which was clearly barred by time. Likewise, regarding other sale deed dt. 14.4.88 also it has been found to be barred by time.

In my view, the very theory of the plaintiff as propounded is exfacie unreliable, inasmuch as, in view of the provisions of Section 43 of the Rajasthan Tenancy Act, the mortgage like the one alleged by the plaintiff stands

automatically liquidated on expiry of period of five years, as the land was delivered possession for period of five years. In that view of the matter, there was no occasion for the plaintiff to wait after expiry of period of five years, or to have lied low for all these years, and he could have straightway initiated proceedings in the Revenue Court for recovery of possession on expiry of five years, in which event the things would have been revealed.

Thus, it clearly appears that the stories propounded by the plaintiff about having come to know of the fraud in 1996, has rightly been disbelieved by the learned courts below.

The appeal thus has no force, and is dismissed summarily.

(N P GUPTA),J.

/Sushil/